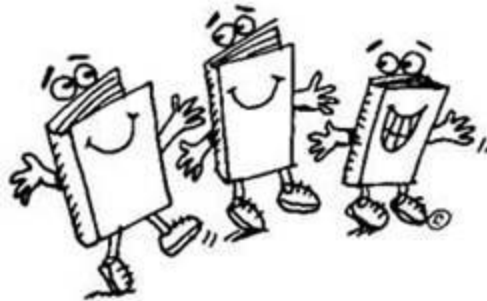


Section 504 Training

**Utah State Office of Education
Educational Equity Section
Jennifer Slade, Education
Specialist/Section 504
Monitoring Officer**

What you need to know about Section 504-How to avoid complaints, errors, and omissions



What are the parts of the Section 504 regulations?

- **Section 504 has several areas of particular importance for schools:**
 - Subpart B – Employment Practices
 - Subpart C – Program accessibility
 - *Subpart D – Requirement for pre-school, elementary secondary education*
- *Subpart E – Requirements for Post Secondary Education*

Is Section 504 funded like other federal programs?

- **NO**... There is no State or Federal funding provided to assist in complying with section 504.
- **All** costs are the obligation of the general school district/charter budget.
- **Many schools** have established a Section 504 line item in their general fund budget to cover necessary accommodations for individuals with disabilities.

How does Section 504 relate to Schools?

- **Students in school settings fall under the protection of Section 504, which prohibits discrimination on the basis of disability from all school programs and activities in both public, charter and private schools receiving direct or indirect federal funding.**

How does Section 504 relate to Schools?

- Section 504 is the other service option available to students with disabilities **who are not already eligible and receiving special education services under the eligibility requirements of the Individuals with Disabilities Education Act (IDEA).**
- Section 504 is designed to provide equal access and fairness in general education to students with disabilities, thereby **leveling the playing field** for them through what is known as a **Section 504 Accommodation Plan.**
- It is **NOT** a plan designed to enhance a student's performance. It is only a plan to provide **fairness and equal access** to education.

Who is Eligible under Section 504

- **The student is “disabled”** if (i) the student has a physical or mental impairment that substantially limits one or more major life activities, (ii) the student has a record of such impairment, or (iii) the student is regarded as having such an impairment. *34 CFR 104.3(j)(1)*
- Most often an impairment with a duration of 6 months or less **is NOT** a disability, however obtain duration of the injury data from the doctor.
 - **Serve students with temporary injuries regardless of expected duration.**

Who is eligible for a Section 504 Accommodation Plan?

- **A student is eligible for a Section 504 Accommodation Plan** if an evaluation shows that the student has a mental or physical impairment that substantially limits one or more major life activities- major bodily function and it impacts the student's education.
- **NO** medical diagnosis is required for Section 504 eligibility.
 - "Section 504 does not require that a school district conduct a medical assessment of a student who has or is suspected of having ADHD unless the district determines it is necessary in order to determine if the student has a disability."

List of Substantially Limiting Disabilities

- **List Includes: (list is non-exhaustive, meaning it can be added to)**
 - Autism, Cancer, Cerebral Palsy, Diabetes, Epilepsy, HIV & Aids, Attention Deficit Disorder, Attention Deficit Hyperactivity Disorder, **Central Auditory Processing Disorder, Obesity**, Multiple Sclerosis, Muscular Dystrophy, Major Depression, Bipolar disorder, Post-traumatic Stress disorder, and Schizophrenia (*Obesity is different because it affect each individual differently, some individuals may be very limited by their impairment while it may not affect others.*)
- **Likely but NOT obviously “Substantially Limiting”:**
Reaching, sitting, interacting with others, hemic, lymphatic, & musculoskeletal systems

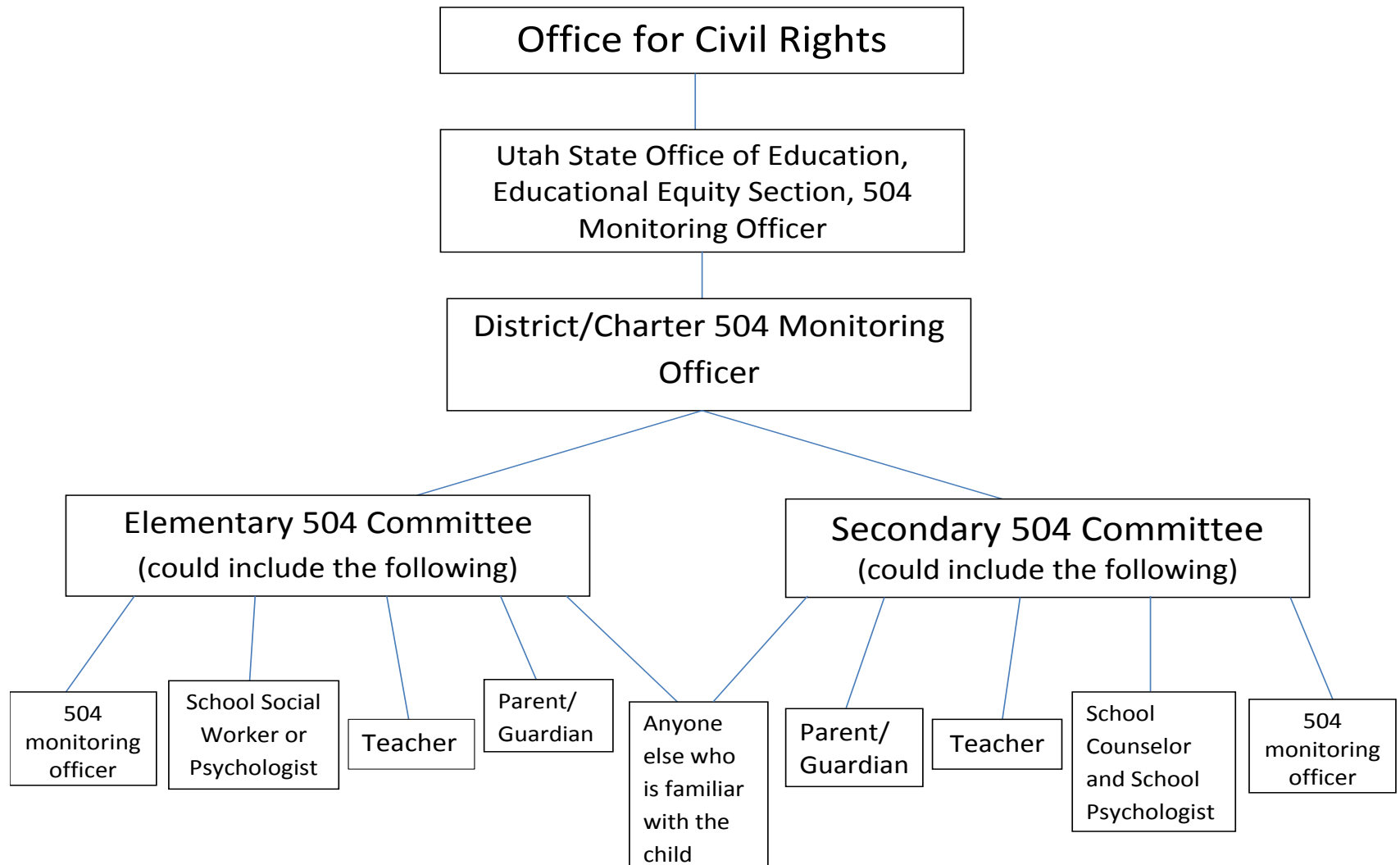
List of Substantially Limiting Disabilities

- **Major Life Activities: (42 U. S. C. 12102)** In general **(A) major life activities include, but are not limited to,** Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending speaking, breathing, learning, reading, concentrating, thinking, communicating & working.
- **(B) Major bodily functions: a major life activity also includes the operation of a major bodily function, including but not limited to,** functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. *(ADA amendments act update, 1-8-2010)*

Who Makes Up a Section 504 Team?

- **Responsibility for considering and developing a section 504 Accommodation Plan** consists of a core group that includes the school *principal or administrator, referring and/or classroom teacher, school counselor, and parent –virtually the same as the core members of EIT.*
- **Every person on the team should be knowledgeable** or *“personally familiar with the child”*
- **The appropriate Team members must be able to correctly interpret data and accurately explain data findings** to other team members and parents.
- **Evaluation and Placement Decisions** made by anyone other than the appropriate IEP team or Section 504 Committee are in violation of *34 CFR 104.35(c).*

Section 504 Flow Chart



Notices Required for Section 504

- General non-description notice
- Annual Child Find/504 duties notification
- Procedural Safeguards
 - Notice of and participation in Section 504 conference
 - Notice of Section 504 evaluation and re-evaluation
 - Notice of Section 504 evaluation and eligibility decisions
 - Notice of Section 504 plan (accommodations, modifications, service placement)
 - Notice of termination of Section 504 eligibility or services
 - Notice of right to due process.

Child Find/FAPE(free appropriate public education)

- If the district/school has reason to believe or suspects a child may qualify for Section 504 accommodations, they need to evaluate said child.
- A request from parents/guardians for 504 accommodations does **not** need to be in writing.
- By not evaluating the student, the district/school is in violation of Section 504.
- Best Practice: IDEA allows up to 60 days to complete an assessment unless the state has a different timeline, in which the state rule controls

(District or school letter head here)

Section 504
Prior Written Notice
(check all boxes that apply)

Students Name: _____ Date of Birth: _____ Student #: _____
School: _____ District: _____

☐ **Evaluation:**

Your child will be evaluated for Section 504 accommodations based on all available evidence. i.e. medical information, state test, teacher evaluation, observations, attendance and any other available information

☐ **Implement Accommodations:**

A Section 504 accommodation plan has been developed based on _____ which substantially limits life activities which includes access to the school curriculum.

☐ **Reevaluation:**

Annually each student qualifying for a Section 504 accommodation plan is reevaluated to assess current student needs. Their Section 504 plan will then be revised or changed according to their current needs.

☐ **Exited from Section 504:**

If student no longer qualifies based on a disability which substantially limits life activities they will be exited from Section 504 status.

☐ **LEA Decision to not initiate or change Section 504 status:**

LEA will not initiate or change your child's Section 504 at this time.

LEA/504 Monitor's signature _____

Parent/Guardian(s) signature _____

* See Section 504 **Procedural Safeguards** for students/parents' rights (34 C.F.R. Section 104.36)

Mitigating Measures

➤ Can the District/Charter school refuse services based on mitigating factors?

Decisions to provide services *must* be made with *disregard* for mitigating factors.

➤ ADA List of Mitigating factors:

- medication
- Medical supplies, equipment or appliances
- Low-vision devices
- Prosthetics
- Hearing aids or implants
- Mobility devices
- Oxygen therapy equipment
- The use of assistive technology and
- Learned behavioral or adaptive neurological modifications
- Surgical intervention (EEOC expanded ADA list by adding)

What steps to take when identifying students who use mitigating measures

- Determine what the evaluation triggers are for students who use mitigating measures.
- Focus data collection on how the student performed prior to using mitigating measures
- Interview parent to get their perspective

What steps to take when identifying students who use mitigating measures

- Get permission to talk to child's doctor
 - ❖ Question you might ask;
 1. How long have you treated the child?
 2. What were they treated for?
 3. If an impairment was found how does it effect the child's learning, thinking ,and reading as well as interaction with others?
 4. Are you more concerned about this child than for the average non-disabled student?

What steps to take when identifying students who use mitigating measures

- If the student is new to your school, contact the previous school to expedite school records
 - ❖ Speak to the students previous teacher and ask the following:
 1. Did the student begin taking medication while in your class?
 2. If so, what changes occurred prior to and after medication began?
 3. Did the student have trouble with learning and concentrating more than the average non-disabled student?

What steps to take when identifying students who use mitigating measures

- 4. Did students behavior or academics exhibit “red flags” before he/she used a mitigating measure?
 - (If not they may not be eligible for a Section 504 accommodation plan)
- ❖ Parents should be provided with an eligibility notice whether they qualify or not and have the opportunity to review any information used in determining eligibility.

Adapted from Section 504 compliance advisor, vol. 16, Iss. 3, pg. 3

Mitigating Measures

- EEOC states: “ if a mitigating measure eliminates or reduces the symptoms or impact of an impairment, that fact cannot be used in determining if a person meets the definition of disability. Instead, the determination of disability must focus on whether the individual would be substantially limited in performing a major life activity without the mitigating measure.”

How significant is the disability, is it substantially limiting?

- **Common definition of substantial limitation**
 - “significantly restricted as to the condition, manner or duration of performing a major life activity” compared to the average person in the general population
- **Educators must** rigorously review and discuss all available information in regards to the student. Resources consist of current academic status, behavioral performance, progress monitoring, classrooms assessments, work samples, student’s progress reports, and school history such as attendance, transiency, students CRT results and/or a medical diagnosis. (Sraga Hauser LLC, © 2011)

How to avoid over-identification

1. Adhere strictly to eligibility criteria
2. Resist pressure to over identify
3. Educate parents and staff
4. Access and utilize medical data.
 - Get permission to speak to Dr. directly not through the parents/guardians interpretation.
5. A medical diagnosis does not automatically give access to 504
6. The same impairment does not effect everyone the same
7. A child on medication itself does not automatically give eligibility

Questions to Ponder When Determining Eligibility

- What is the nature and severity of the impairment?
- Is the impairment mild or severe?
- Does it result in academic failure or student achieving at lower than expected levels?
- Does it effect a major life activity or a bodily function and if so how?

Determining 504 Accommodations

- Require only what student needs
- **Write out the accommodation(s)** rather than create a check list
- Remember accommodations should relate back to the data
- Annual review of 504 plan is “best practice” (do not continue plan if student no longer needs it. If student is moving to new school, just make them aware of previous plan.)

Remember: Section 504 requires a level playing field for students with disabilities, not an unfair advantage.

Section 504 Plan Implementation

- Design a process that ensures quick delivery and understanding.
- Revise parts and vocabulary of plan if not understood.
- Provide supervision to see if student is successful. If not determine IDEA eligibility.
- Get principal involved incase teacher(s) refuse to implement plan, principal can ensure the plan is followed.

Can a parent elect to have their child served by Section 504 only when they are eligible for IDEA?

- **No**, although some parents wish to not have their child labeled as special education recipient. OCR has stated in no uncertain terms that parents have no such flexibility. In a letter to McKethan, 25 IDELR 295 (OCR 1996) OCR stated that it is impermissible for a student's parent to refuse IDEA and require the district to develop and IEP under Section 504. A rejection of IDEA is a rejection of Section 504. Also a district has no flexibility to opt to provide services and accommodations under Section 504 when the student is IDEA eligible. Yankton Sch. Dist. V. Schramm, 24 IDELR 704 (8th Cir. 1996)

Section 504 Qualifying Scenario

- Group Activity
 - Read the scenario
 - Determine if the student should qualify for Section 504.
 - Is there enough information/data to demonstrate the student has a disability that affects a major life activity such as having an effect on accessing the curriculum, navigating the school building etc.

Why Procedural Safeguards for a 504 Plan

- The Office for Civil Right is the agency responsible for the enforcement of Section 504 in programs and activities the receive federal financial assistance from the US Department of Education, including but not limited to public school districts.
- The OCR does not review all 504 plans as long as a school district complies with the Procedural requirements of Section 504.

Section 504 procedural safeguards

(34 C.F.R. Section 104.36)

- Procedural Safeguards should include:
 - Notice,
 - An opportunity for parents/guardians to examine relevant records,
 - An impartial hearing with opportunity for participation by person's parents/guardian and representation by counsel, and
 - A review process

Give notice of section 504 evaluation and re-evaluation decisions

- “When a district, through a student study team (SST) or a similar process, decides to deny a parent request for an evaluation, the district must tell the parents of the decision and how to appeal it under Section 504. *Las Virgenes (CA) Unified Sch. Dist., 55 IDELR 83 (OCR 2010)*

What should your Due Process Include?

- Notice of the procedures, including where complaints may be filed.
- Indicate that it applies to complaints by employees, students, and third parties.
- Procedures should provide for adequate, reliable and impartial investigation of complaints, including the opportunity to present witnesses and other evidence.
- There should be reasonably prompt time frames for the major stages of the complaint process.
- Procedures should provide for notice to be given to the parties regarding the outcome of the complaint.

What should your Due Process Include?

(continued)

- Provide an assurance that the school will take steps to prevent reoccurrence of any harassment and to correct discriminatory effects of the harassment on the complainant and others , if appropriate.
- Procedures should include a provision advising that retaliation against any individual who files a complaint or participates in the grievance procedure is prohibited.
- The complainant should be given a notice of the right to end the informal process and any time and begin the formal stage of the complaint process. (*Sraga Hauser, LLC ©2011*)
- A district must not only respond to a written complaint but also verbal complaints. (*Berlin (NH) Pub. Schs., 54 IDELR 205 (OCR 2009)*)

Health Plan vs. Section 504 Plan

- Even if you think a child just needs a health plan to meet their needs, a Section 504 evaluation should be done.
- If they qualify for section 504 and health plan complete them separately.
- OCR determined that a district's practice of providing health care plans to student with diabetes, instead of determining their eligibility for a 504 plan, was a violation of Section 504 child find requirements. Districts must evaluate a student's eligibility for a section 504 and related aids and services, rather than automatically writing a health care plan. *Tyler (TX) Indep. Sch. Dist., 56 IDELR 24 (OCR 2010)*

Parents at Section 504 Meeting

- At the 504 planning meeting, eligibility, denial of services or developing a 504 plan: Parents should be given the opportunity to examine “relevant records. Which include evaluation results, test results, teacher’s input, and any other information used to determine students eligibility.

Section 504 Do's and Don'ts

- Common Identification
 - Must have physical or mental impairment that substantially limits a life activity.
- Over Identification
 - Eliminate; attendance, transiency, limited English proficient (LEP), and effects of Divorce illness etc.
- Focus on students struggles:
 - If no physical or mental impairment, do not qualify
- Must substantially limit:
 - Caring for one's self,
 - Performing manual task,
 - Walking, seeing, hearing, speaking, breathing and learning,
 - Impacts core part of major life of student activity.

Students with Section 504 plan are protected when involved in **any** program paid for with federal funds

- “No otherwise qualified individual with a disability shall solely by reason of her or his disability, be excluded from the participation in or be denied the benefits of, or be subjected to discrimination under **any** program or activity receiving Federal financial assistance.....”
- U.S. Department of Education (ED). Section 504

Manifestation Determination Office of Civil Rights (OCR) case

- A student with ADHD allegedly punched a counselor. The principal suspended the student for 10 days and referred him to the review committee for possible expulsion. He was expelled and placed in a alternative setting. His parents filed a complaint with OCR because the school district did not determine whether the student conduct was a manifestation of his disability. The OCR determined that the district had violated Section 504 when it expelled a 7th grader with ADHD without conducting a manifestation determination. (*Springfield Sch. Dist. # 186, 55*

NEBO SCHOOL DISTRICT
SECTION 504 MANIFESTATION DETERMINATION

Student Name: _____ **School:** _____
Date of Birth: _____ **Student No.:** _____ **Grade Level:** _____

Date of Current 504 Plan: _____

Date of Manifestation Determination: _____

Describe the behavior or incident that is subject to disciplinary action:

What relevant evaluation and diagnostic information describes the student's disability?

What accommodations or services are indicated on the current Section 504 Plan?

Check the following statements that the 504 Team determines to be true:

| Yes | No | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | The 504 Team has reviewed and considered all of the above information. |
| <input type="checkbox"/> | <input type="checkbox"/> | The 504 Plan is appropriate for the student. |
| <input type="checkbox"/> | <input type="checkbox"/> | All of the accommodations/services on the 504 Plan have been provided. |
| <input type="checkbox"/> | <input type="checkbox"/> | The student's disability does not impair his/her ability to control the misbehavior. |
| <input type="checkbox"/> | <input type="checkbox"/> | The student's disability does not impair his/her ability to understand the consequences of the misbehavior. |

All boxes must be checked "Yes" in order for it to not be a manifestation. If any answer is checked "No," the student's behavior is a manifestation.

Check the following statement that the 504 Team determines to be true:

____ The current behavior under consideration is a manifestation of the student's disability.
____ The current behavior under consideration **IS NOT** a manifestation of the student's disability.

504 Team Participants:

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

What constitutes a significant change in placement?

- OCR policy states, “that when the exclusion of a child with a disability is permanent (expulsion), or for an indefinite period, or for more than 10 consecutive school days each or fewer in duration may create a pattern of exclusion that constitutes a significant change in placement. The determination of whether the series of suspensions creates a pattern of exclusions that constitutes a significant change in placement must be made on a case-by-case basis.”

Examples of when a student qualifies for Section 504 but not IDEA

- Temporarily Disabled
- Socially maladjusted, but not Emotionally Disturbed (ED)
- Transitioned out of Special Education
- A learning disability student whose discrepancy between ability and achievement is less than severe
- A student with ADD or ADHD who is not Learning Disabled (LD), Other Health Impaired (OHI) or ED
- Diabetics, asthmatics and students with HIV/Aids

How to avoid Section 504 complaints related to athletic tryouts

- Coaches should keep documentation on all students. (Skill set and demonstration of skill set)
- Review policies and eliminate discriminatory policies that may relate to tryouts.
- Parents and students should be notified of the date of tryouts early so they can ask questions and request accommodations for their student.
- Accommodations for tryouts/extra-curricular activities should be discussed at the Section 504 accommodation planning meeting. Ask what activities student might be interested in and what accommodations that would be needed for those activities.

Group Activity

- Read the Section 504 scenario with your small group.
- Then develop a response through a group discussion
- Designate a spoke person for your group to share whole group



Questions?

